IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT

Mr. Justice Syed J. R. Mudassir Husain,
Chief Justice
Mr. Justice Amirul Kabir Chowdhury

CIVIL PETITION FOR LEAVE TO APPEAL NO.1402 of 2004
(From the judgment and order dated 01.08.2004 passed by the High Court Division in Civil Revision No.2271 of 2002.)

Nurul Islam and others ....Petitioners

=Versus=

Ali Hossain and others ....Respondents

For the Petitioners : Mrs. Sufia Khatun, Advocate-on-Record.

For Respondent Nos.1 & 2 : Mr. Md. Nawab Ali, Advocate-on-Record.

Respondent Nos.3-42 : Not represented.

Date of hearing : 25.07.2006.

JUDGMENT

Amirul Kabir Chowdhury, J.- Nurul Islam and three other plaintiff petitioners seek leave to appeal against the judgment and order dated 01.08.2004 passed by a Single Bench of the High Court Division in Civil Revision No.2271 of 2002 making the rule absolute.

The facts, in brief, are that the plaintiffs filed Title Suit No.91 of 1984 in the 2nd Court of the learned Subordinate Judge (now Joint District Judge), Comilla for declaration of their title in the suit land and for

declaration that the preliminary decree dated 26.08.1984 passed by the learned Subordinate Judge, 2nd Court Comilla in Partition Suit No.78 of 1981 renumbered as Other Class Suit No.251 of 1984 is illegal, void etc. and for further declaration that the deeds in question shown in the schedule of the plaint are fraudulent and collusive. The defendant respondents contested the suit filing written statement denying the material averments made in the plaint and contending, inter-alia, that in the aforesaid suit i.e. Partition Suit No.78 of 1981 (renumbered as Partition suit No.251 of 1984), the father of the plaintiff petitioners being the defendant, summons was duly served upon him and he did not contest the partition suit and the suit being decreed legally, the subsequent suit i.e. Title Suit No.91 of 19984 was liable to be dismissed.

Pursuant to the decree of the aforesaid Partition Suit No.78 of 1981 (i.e. Partition Suit No.251 of 1994) Execution case No.7 of 1985 was started. The respondents (i.e. plaintiffs of the Other Suit No.91 of 19984) filed an application on 08.11.2000 praying to stay the aforesaid execution case No.7 of 1985 till disposal of Suit No.91 of 1984 and the trial court allowed the application thereby stayed the proceeding of the execution case by order dated 03.11.2000. The defendant respondents filed application on 29.08.2001 for vacating the order of the learned Assistant Judge staying the proceeding of Execution Case No.07 of 1985. On 07.04.2002 the learned Assistant Judge rejected

the petition. Thereafter the defendants filed Civil Revision Case No.[illegible]71 of [illegible] before the High Court Division and a rule was obtained. The High Court Division by the impugned order made the rule absolute, thereby setting aside order dated 07.04.[illegible].

Hence is this petition.

Mr. Md. Nawab Ali, learned Advocate-on-Record submits that the impugned order of the High Court Division is illegal as it prejudiced the plaintiff petitioners.

We have considered the submissions. The High Court Division passed the impugned judgment came to the finding to the effect:-

> "It appears that the opposite parties are neither the holder of a decree nor a judgment debtor and are third parties. The court may stay execution of a decree till disposal of a suit which is between the decree holder and the judgment debtor but an execution of a decree cannot be stayed till disposal of a suit filed by a third party. It has been held in a case as reported in 49 DLR (HC) page 569 that when a suit is pending in any court against the holder of a decree of such court at the instance of the judgment debtor. The court may stay execution of the decree until the fact of the suit has been decided. This contemplates the pendency of a suit between the decree holder and the judgment debtor in respect of the decree in question and it has no reference to any suit filed by a third party.
>
> . . . .
>
> A decree holder cannot be allowed to be deprived of the fruits of a lawful decree obtained after many years of litigation. The execution case should not be stayed and if the plaintiff succeeds in his suit then law will take

its own course and he will get back his possession which will be restored to him.

. . . ."

In view of the aforesaid finding of the High Court Division we are of the view that the petition has got no substance.

In view of the discussion made above, the petition is dismissed.

Sd/- Syed J.R. Mudassir Husain, C.J.

Sd/- Amirul Kabir Chowdhury J.

The 25th July, 2006

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Superintendent
Appellate Division
Supreme Court of Bangladesh

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